

Message Text

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TO AMEMBASSY QUITO IMMEDIATE

INFO AMCONSUL GUAYAQUIL

C O N F I D E N T I A L STATE 156104

E.O. 11652: GDS

TAGS: PFOR, BBAK, BDIS, EINV, EC US

SUBJECT: ADA CASE

REF: QUITO 4492

1. SUMMARY: ADA OFFICIALS VISITED THE DEPARTMENT ON JUNE 25 TO REVIEW THE OPTIONS OPEN TO THEM SINCE RECEIPT OF A LETTER FROM THE MINISTER OF NATURAL RESOURCES WHICH SEEMINGLY INDICATES THAT THE GOE HAS DECIDED NOT TO COMPENSATE ADA AND IN FACT CANCELS ALL NEGOTIATIONS CARRIED OUT DURING THE PAST YEAR. DEPT AGREES THAT AN EARLY USG APPROACH TO THE GOE NOW APPROPRIATE, URGING PROMPT RE-OPENING OF NEGOTIATIONS FOR COMPENSATION. APPROACH SHOULD CONFIDENTIAL

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EMPHASIZE THE INTEREST OF THE USG IN THE CONCLUSION OF A PROPER SETTLEMENT AND INDICATE CONCERN AT THE APPARENT TURNABOUT IN GOE POLICY CONCERNING COMPENSATION OF ADA.

2. ADA MANAGER JOSEPH LASSITER, AND OTHER ADA CONSORTIUM REPRESENTATIVES, MET ON JUNE 25 WITH REPRESENTATIVES OF THE DEPT, TREAS, OPIC AND CIEP TO OUTLINE THE CURRENT STATUS OF THEIR NEGOTIATIONS WITH THE GOE AND TO REQUEST USG ACTION TO SUPPORT THEM. THE CONSORTIUM HAS TRANSMITTED TO QUITO A LETTER DATED JUNE 18, 1975 TO BE DELIVERED THIS WEEK TO THE GOE MINISTER OF NATURAL RESOURCES AS PRESIDENT OF THE SPECIAL HIGH-LEVEL COMMISSION DESIGNATED TO RESOLVE MATTERS RELATING TO THE ADA CONSORTIUM. THE LETTER DENIES MISCONDUCT, RESERVES THE RIGHTS OF THE CONSORTIUM, CALLS FOR AN INDEPENDENT AUDIT BY AN INTERNATIONAL AUDITING FIRM AND REQUESTS A MEETING WITH THE HIGH COMMISSION. A COPY WILL BE MADE AVAILABLE TO THE EMBASSY.

3. IN REPLY TO ADA'S REQUEST FOR ASSISTANCE, THE VISITORS WERE TOLD THAT THE USG IS PREPARED TO MAKE A HIGH-LEVEL DEMARCHE. OUR APPROACH WOULD FOCUS ON THE NEW DEVELOPMENTS WHICH HAVE TAKEN PLACE IN THE NEGOTIATIONS, I.E. THE MINISTERIAL LETTER OF APRIL 29 WHICH, IN A VERY AMBIGUOUS FASHION, INDICATES THE POSSIBILITY THAT THE GOE MAY HAVE NO INTENTION OF PROVIDING COMPENSATION TO THE GULF OF GUAYAQUIL CONSORTIUM. THE ADA GROUP WAS TOLD THAT THE MAJOR THRUST OF ANY USG APPROACH AT THIS TIME WOULD BE TO SEEK AN EARLY MEETING BETWEEN THE GOE HIGH COMMISSION AND THE ADA CONSORTIUM.

4. AS EMBASSY IS AWARE, DURING PAST SEVERAL YEARS WE HAVE SPENT CONSIDERABLE TIME FOLLOWING ADA' CASE. FROM INFORMATION AVAILABLE, IT APPEARS THAT WHILE ECUADOREANS WHO ORIGINALLY RECEIVED CONCESSION MAY HAVE ACTED IMPROPERLY OR ILLEGALLY, THERE HAVE BEEN NO FORMAL CHARGES (DESPITE POSSIBLE WIDESPREAD BELIEF IN QUITO) THAT ADA OR ITS OFFICERS WERE GUILTY OF ANY IMPROPER CONDUCT. MOREOVER, TO OUR KNOWLEDGE GOE HAS NEVER TAKEN OR THREATENED ANY CIVIL OR CRIMINAL ACTION AGAINST ADA. CONFIDENTIAL

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WE FEEL THAT IN ABSENCE OF ANY INDICATION THAT ADA WAS GUILTY OF WRON8DOING IT SHOULD BE PRESUMED TO BE INNOCENT, AND WE DO NOT SEE EXISTENCE OF RUMORS AS JUSTIFICATION FOR LACK OF ACTION BY GOE. WHILE THE GOE HAD A SOVEREIGN RIGHT TO CANCEL CONCESSION, IT HAS A CORRESPONDING OBLIGATION TO PAY JUST COMPENSATION. WE ARE THUS NOT INCLINED TOWARD COMPREHENSIVE REVIEW OF ADA CASE AT THIS TIME.

5. DEPT CONCURS EMBASSY VIEW THAT ADA MEETING WITH HIGH COMMISSION (PARA 1,REF. B) NECESSARY FIRST STEP, AND IN ADVISABILITY OF ADA'S SENDING BRINSMAD E OR OTHER INDIVIDUAL WITH A FULL AUTHORITY TO QUITO TO NEGOTIATE WITH HIGH

COMMISSION. WE DOUBT THAT SOMEONE LIKE BRINSMADE IS PREPARED TO WAIT AROUND IN QUITO UNTIL THE GOE DECIDES IT IS TIME TO ACT, BUT HAVE BEEN ASSURED THAT ADA WOULD PROVIDE NEGOTIATOR FROM THE UNITED STATES AS SOON AS MEETING WITH HIGH COMMISSION CAN BE ARRANGED.

6. ACCORDING TO THE ADA REPS AT THE JUNE 25 MEETING, THE GOE HARDLINER AGAINST PROPER COMPENSATION CONTINUES TO BE ATTORNEY GENERAL KAROLYS, WHO ALLEGEDLY DRAFTED THE APRIL 29 LETTER. WHEN SHOWN THAT LETTER, FORMER FORMIN SUB-SECRETARY VALDEZ WAS REPORTEDLY SHOCKED AND EXPRESSED THE VIEW THAT THE ATTORNEY GENERAL APPEARED TO HAVE GONE OVERBOARD IN HIS LETTER. THE POSITION OF MINISTER SALAZAR CONCERNING ADA COMPENSATION IS UNCLEAR, BUT IT MAY BE SURMISED THAT HE IS IN AGREEMENT WITH EFFORTS TO SWEEP THE MATTER UNDER THE RUG.

7. THE DEPARTMENT BELIEVES, PUTTING THE AMBIGUITY OF THE APRIL 29 LETTER ASIDE, IT IS NECESSARY TO ASSUME THAT THE GOE IS WILLING TO MEET WITH OFFICERS OF THE CONSORTIUM. THE EMBASSY SHOULD ENDEAVOR TO MAKE AN APPOINTMENT WITH THE MINISTER OF FOREIGN AFFAIRS AND/OR THE MINISTER OF NATURAL RESOURCES IN ORDER TO MAKE VERBAL DEMARCHE ALONG LINES PARAS 8-12.

8. THE USG HAS OBSERVED WITH INTEREST THE NEGOTIATIONS WHICH WERE UNDERTAKEN BETWEEN THE GOE AND THE GULF OF GUAYAQUIL CONSORTIUM FOR PROPER COMPENSATION FOR INVEST-
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MENTS UNDERTAKEN BY U.S. COMPANIES TO EXPLORE FOR HYDROCARBONS IN THE GULF OF GUAYAQUIL. THESE NEGOTIATIONS APPEARED TO BE DEVELOPING IN A PROMISING FASHION, WHEN THE GOE NAMED A COMMISSION IN AUGUST 1974 TO INVESTIGATE AND REVIEW THE LEGAL AND FINANCIAL STATUS OF THE CONSORTIUM WITH THE STATED INTENTION OF PROVIDING COMPENSATION TO THE CONSORTIUM OF THE GULF OF GUAYAQUIL.

9. WE HAVE RECENTLY BEEN INFORMED BY THE MANAGEMENT OF THE ADA CONSORTIUM THAT IT RECEIVED A LETTER DATED MAY 27 FROM THE MINISTER OF NATURAL RESOURCES WHICH INCLUDED CERTAIN RESOLUTIONS ADOPTED BY THE ECUADOREAN GOVERNMENT ON APRIL 29. THIS LETTER, INDICATES, INTER ALIA, THAT THE GOE HAS DECIDED TO ANNUL ALL OF ITS OWN ADMINISTRATIVE ACTS TAKEN TO FURTHER NEGOTIATIONS WITH THE GULF OF GUAYAQUIL CONSORTIUM SINCE JULY 1974. IN ADDITION, THE DESIGNATION OF THE INTER-INSTITUTIONAL COMMISSION MADE BY THE MINISTER OF NATURAL RESOURCES IN SEPTEMBER 1974, AND ASSOCIATED SUB-COMMITTEES IS DECLARED NULL AND VOID.

10. CHARGES OF MISCONDUCT ON THE PART OF THE CONSORTIUM ARE ALSO AIRED IN THIS COMMUNICATION. WE TAKE NO POSITION

ON ALLEGED MISCONDUCT BY U.S. COMPANIES IN ECUADOR BUT
BELIEVE THAT CHARGES OF THIS KIND, MADE WITHOUT REFERENCE

TO JUDICIAL INQUIRY OR LEGAL PROCESS IN ECUADOR, MARK A
SIGNIFICANT CHANGE IN THE ATTITUDE OF THE GOVERNMENT OF
ECUADOR TOWARD NEGOTIATIONS WITH THE CONSORTIUM.

11. IT WOULD BE UNFORTUNATE IF MISUNDERSTANDINGS AROSE
IN THE INTERNATIONAL FINANCIAL COMMUNITY CONCERNING THE
DETERMINATION OF THE GOE TO TREAT FOREIGN INVESTORS FAIRLY
AND EQUITABLY AND TO RESOLVE DISPUTES PROMPTLY WHEN THEY
ARISE. SUCH MISUNDERSTANDINGS, IF UNRESOLVED, INEVITABLY
RAISE QUESTIONS CONCERNING FUTURE INVESTMENTS.

12. IN THAT SAME LETTER OF MAY 27, THE MINISTER OF
NATURAL RESOURCES MAKES NOTE OF A SPECIAL COMMISSION
COMPOSED OF THE MINISTER OF FOREIGN RELATIONS, THE
MINISTER OF GOVERNMENT AND THE ATTORNEY GENERAL OF ECUADOR
AS BEING THE ONLY COMPETENT BODY HAVING THE COMPETENCE TO
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DEAL WITH THE CLAIMS OF THE ADA CONSORTIUM. WE UNDER-
STAND THAT THE CONSORTIUM HAS REQUESTED A MEETING WITH THAT
HIGH COMMISSION. CONSIDERABLE TIME HAS NOW PASSED SINCE
THE NULLIFICATION OF THE ADA CONSORTIUM CONTRACT IN 1972,
AND THE RECENT CANCELLATION OF THE GOOD FAITH EFFORTS
EXPENDED BY THE AMERICAN COMPANIES DURING THE PAST YEAR
INTRODUCES THE CONCERN THAT GOVERNMENT OF ECUADOR MAY HAVE
CHANGED ITS REPEATEDLY STATED POLICY OF WORKING TOWARD A
JUST COMPENSATION FOR THOSE COMPANIES, WE HOPE THE GOVERN-
MENT OF ECUADOR WILL TAKE WHATEVER MEASURES NECESSARY TO
REOPEN ITS NEGOTIATIONS WITH THE ADA GROUP OF COMPANIES
WITH VIEW TOWARD REACHING AGREEMENT ON JUST COMPENSATION.

13. PLEASE REPORT SOONEST OFFICIAL REACTIONS TO THE
ABOVE DEMARCHE. INGERSOLL

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